



**ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 1995 SENATE BILL 11**

April 4, 1995 - Offered by COMMITTEE ON JUDICIARY.

1 **AN ACT** *to renumber and amend* 895.045; and *to create* 895.045 (2) to (5) of the  
2 statutes; **relating to:** comparative negligence and punitive damages.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

3 **SECTION 1.** 895.045 of the statutes is renumbered 895.045 (1) and amended to  
4 read:

5 895.045 (1) (title) COMPARATIVE NEGLIGENCE. Contributory negligence shall  
6 does not bar recovery in an action by any person or the ~~person's~~ person's legal  
7 representative to recover damages for negligence resulting in death or in injury to  
8 person or property, if such ~~that~~ that negligence was not greater than the negligence of the  
9 person against whom recovery is sought, but any damages allowed shall be  
10 diminished in the proportion to the amount of negligence ~~attributable~~ attributed to  
11 the person recovering. Except as provided in this subsection and subs. (2) and (3),  
12 the liability of each person found to be causally negligent whose percentage of causal  
13 negligence is less than 15% is limited to the percentage of the total causal negligence  
14 attributed to that person. Any person whose percentage of causal negligence is less

1 than 15% shall be jointly and severally liable for the damages allowed if the person's  
2 causal negligence is at least twice that of the causal negligence of the person  
3 recovering or the causal negligence of the person recovering is 0%, and only to the  
4 extent of the limits of any applicable insurance of the person whose percentage of  
5 causal negligence is less than 15%.

6 **SECTION 2.** 895.045 (2) to (5) of the statutes are created to read:

7 895.045 (2) CONCERTED ACTION. Notwithstanding sub. (1), if 2 or more persons  
8 act in accordance with a common scheme or plan, those persons are jointly and  
9 severally liable for all damages resulting from that action, except as provided in sub.  
10 (5).

11 (3) JOINT AND SEVERAL LIABILITY. Except as provided in sub. (5), nothing in this  
12 section prohibits the imposition of joint and several liability in a cause of action for  
13 damages resulting from environmental pollution, hazardous waste or substances or  
14 waste disposal sites.

15 (4) DOUBLE ATTORNEY FEES AND DISBURSEMENTS. Any defendant may recover  
16 double the attorney fees allowed under s. 814.04 (1) and double the disbursements  
17 allowed under s. 814.04 (2) if all of the following apply:

18 (a) The negligence of the defendant is less than 15%.

19 (b) The fact-finder is required to determine if the negligence of 2 or more  
20 persons other than the plaintiff resulted in the plaintiff's damages.

21 (c) The defendant is not found jointly and severally liable for the plaintiff's  
22 damages.

23 (5) APPLICATION OF JOINT AND SEVERAL LIABILITY. The rule of joint and several  
24 liability does not apply to punitive damages.

25 **SECTION 3. Initial applicability.**

